

## **REMARKS**

These remarks are filed in response to the Office Action of May 13, 2008, a response to which is due by August 13, 2008. Accordingly, the Applicants respectfully submit that no extension of time fees fall due in connection with the filing of this paper. If the Applicants are mistaken, the Commissioner is hereby authorized to deduct any necessary fees from our Deposit Account No. 13-2400.

Claims 1-13 are pending in the present application. Claim 13 is a new claim added by way of this amendment. Support for claim 13 may be found in paragraph [0072] of the specification as filed.

The Examiner has rejected claims 1-12 under 35 U.S.C. § 103(a) as being unpatentable over Ould-Brahim et al., "BGP/GMPLS Optical VPNs" (hereinafter "Ould-Brahim 1") in view of Ould-Brahim et al., "GVPN: Generalized Provider-provisioned Port-based VPNs using BGP and GMPLS" (hereinafter "Ould-Brahim 2"). The Applicant respectfully disagrees.

The Office Action was issued following the United States Supreme Court's decision in the case of KSR Int'l Co. v. Teleflex Inc., No. 04-1350 (April 30, 2007). In light of the KSR decision, Applicant wishes to address various issues pertaining to a proper analysis under section 103.

The Examiner, by citing references and asserting a reason for combining elements from the references, has elected to base rejection upon a

teaching, suggestion or motivation to select and combine features from the cited references. Applicant wishes to point out that the Supreme Court's KSR decision did not reject use of a "teaching, suggestion or motivation" analysis as part of an obviousness analysis, characterizing the analysis as "a helpful insight." KSR slip op. at 14-15.

When the Examiner chooses to base a rejection upon a teaching, suggestion or motivation analysis, the Examiner must satisfy the requirements of such an analysis. In particular, the Examiner must demonstrate, with evidence and reasoned argument, that there was a teaching, suggestion or motivation to select and combine features from the cited references, see, e.g., *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Moreover, the prior art must suggest the desirability of the combination, not merely the feasibility, see *In re Fulton*, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004).

In the event that the cited references fail to disclose or suggest all of the elements recited in the claims, then combining elements from the references would not yield the claimed subject matter, regardless of the extent of any teaching, suggestion or motivation.

Although the Supreme Court did not reject use of a "teaching, suggestion or motivation" analysis, the Supreme Court did say that it was not the only possible analysis of an obviousness question. Because of the Examiner's chosen ground for rejection, however, the only pending ground for rejection must be a

"teaching, suggestion or motivation" analysis. In the event that the Examiner chooses to consider a different avenue for rejection, this would be a new ground for rejection not due to any action by Applicant. Applicant has a right to be heard on any new ground for rejection.

Applicant further respectfully reminds the Examiner that, even after KSR, the following legal principles are still valid, having been endorsed by the Supreme Court or having been unaffected by its decision: (1) the USPTO still has the burden of proof on the issue of obviousness; (2) the USPTO must base its decision upon evidence, and it must support its decision with articulated reasoning (slip op. at 14); (3) merely demonstrating that all elements of the claimed invention exist in the prior art is not sufficient to support a determination of obviousness (slip op. at 14-15); (4) hindsight has no place in an obviousness analysis (slip op. at 17); and (5) Applicant is entitled to a careful, thorough, professional examination of the claims (slip op. at 7, 23, in which the Supreme Court remarked that a poor examination reflected poorly upon the USPTO).

Claim 1 requires that the claimed network use a signalling mechanism "having a multi-service tunnel selector mechanism". It is submitted that neither Ould-Brahim 1 nor Ould-Brahim 2 disclose a signalling mechanism having a multi-service tunnel selector mechanism.

The multi-service tunnel selector mechanism helps to distinguish claim 1 from Ould-Brahim 1 and Ould-Brahim 2 in that the network architecture involves a

generalized provider network, rather than the GMPLS-based provider network of the inventor's previous work. Accordingly, there is a necessity to select a tunnel across the provider network and the tunnel may be selected from among tunnels of several distinct types, with the selection of a tunnel type based on the service supported.

The tunnels in the networks disclosed in Ould-Brahim 1 and Ould-Brahim 2 are of one transport type (e.g., IP or MPLS) but the tunnels can be used by multiple services. One service will be sent through one tunnel type at given time. However, the architectures of Ould-Brahim 1 and Ould-Brahim 2 do not have what is called tunnel selector because it is assumed, in Ould-Brahim 1 and Ould-Brahim 2, that all services will use either IP or MPLS tunnels and, through provisioning, the service and type of tunnel are pre-established. In contrast, the multi-service tunnel selector mechanism of the signaling mechanism of claim 1 may be considered to act as an automatic selection mechanism allowing for support of many types of tunnels for many services and for single service. For example, in the architecture of claim 1, traffic related to a single service can be sent across the provider network through different tunnels of distinct types, if the multi-service tunnel selector mechanism decides that more than one tunnel type can be used.

The Examiner indicates that Ould-Brahim 1 discloses a signaling mechanism that has a tunnel selector mechanism. For support, the Examiner cites a passage of Ould-Brahim 1 that indicates that multiple channels may be received by a PE ONE at a single port such that one CE could establish optical connection to multiple other CEs over this single port. However, the Applicant submits that, in the

case represented by Ould-Brahim 1, the optical connection to multiple other CEs would be provisioned ahead of time and, accordingly, a tunnel selector mechanism would be unnecessary.

The Examiner admits that the mechanism considered by the Examiner to be equivalent to the claimed tunnel selector mechanism is not a multi-service tunnel selector mechanism. The Examiner then cites Ould-Brahim 2 to illustrate that the optical connections to multiple other CEs over the single port disclosed in Ould-Brahim 1 may be multi-service. Without regard to whether the optical connections to multiple other CEs over the single port disclosed in Ould-Brahim 1 may be multi-service, Ould-Brahim does not disclose any evidence that the optical connections would be anything but pre-provisioned connections, i.e., connections that do not require a tunnel selector mechanism, as required by claim 1.

Since neither Ould-Brahim 1, nor Ould-Brahim 2, nor a combination of Ould-Brahim 1 and Ould-Brahim 2 disclose a multi-service tunnel selector mechanism, the combination of Ould-Brahim 1 and Ould-Brahim 2 may not be used to reject claim 1 as obvious. It is respectfully requested that the Examiner withdraw the rejection of claim 1, and the rejection of claim 2 dependent thereon, on that basis.

Claim 3 has been amended to read as an independent claim that incorporates all limitations from claim 1, on which claim 3 originally depended. Claim 3 recites a network for providing multi-service generalized Layer-2 VPN services. In

particular, the network of claim 3 includes a signaling mechanism having "a manager mechanism having a first portion used to effect connection admission control and a second portion used to select encapsulation in response to a connection request".

The Examiner has provided a rejection of claim 3 based on the rejection of claim 1. The rejection of claim 3 then cites a passage from Ould-Brahim 1 that reads "alternatively tariffs could be triggered on the basis of signaling mechanisms" to indicate that Ould-Brahim 1 discloses a signaling mechanism having a manager mechanism having a second portion used to select encapsulation in response to a connection request, as required by claim 3. The Applicant submits that the disclosure of triggering of tariffs on the basis of signaling mechanisms in no way provides evidence of selecting encapsulation in response to a connection request.

Claims 9, 10 and 11 have been amended to depend from claim 3 rather than from claim 1.

Since neither Ould-Brahim 1, nor Ould-Brahim 2, nor a combination of Ould-Brahim 1 and Ould-Brahim 2 disclose a "signaling mechanism having...a manager mechanism having...a second portion used to select encapsulation in response to a connection request", as required by claim 3, the combination of Ould-Brahim 1 and Ould-Brahim 2 may not be used to reject claim 3 as obvious. It is respectfully requested that the Examiner withdraw the rejection of claim 3, and the rejection of claims 4, 9, 10 and 11 dependent thereon, on that basis.

Claim 5 requires creating, via a multi-service tunnel selector mechanism, connectivity between elements within a subset of elements. As discussed above, there is no motivation in either of Ould-Brahim 1 or Ould-Brahim 2 to use a multi-service tunnel selector mechanism within the VPN architecture. Additionally, claim 5 has been amended to incorporate a limitation from claim 7. In particular, the method of claim 5 now requires "selecting an encapsulation protocol in response to a connection request via a second portion of a manager mechanism". The Applicant submits that, while encapsulation may be used in the networks described by Ould-Brahim 1 and Ould-Brahim 2, neither Ould-Brahim 1 nor Ould-Brahim 2 consider selecting an encapsulation protocol responsive to a connection request. Indeed, there is no mention of encapsulation protocol in either of Ould-Brahim 1 or Ould-Brahim 2.

Claim 7 has been amended to delete a portion that was imported in claim 5.

Claim 8 has been amended to depend from claim 5 rather than from claim 7.

Since neither Ould-Brahim 1, nor Ould-Brahim 2, nor a combination of Ould-Brahim 1 and Ould-Brahim 2 disclose "selecting an encapsulation protocol in response to a connection request", the combination of Ould-Brahim 1 and Ould-Brahim 2 may not be used to reject claim 5 as obvious. It is respectfully requested that the Examiner withdraw the rejection of claim 5, and the rejection of claims 6, 7,

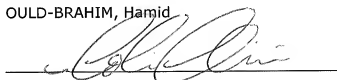
8 and 12 dependent thereon, on that basis.

In view of the foregoing, the applicant respectfully submits that claims 1-13 are now in condition for allowance. Favorable reconsideration and allowance of claims 1-13 are respectfully requested.

Respectfully Submitted,

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By:

A handwritten signature in dark ink, appearing to read 'Colin Climle', is written over a horizontal line.

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